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LAW OFFICES OF
LOUIS E. GITOMER, LLC.

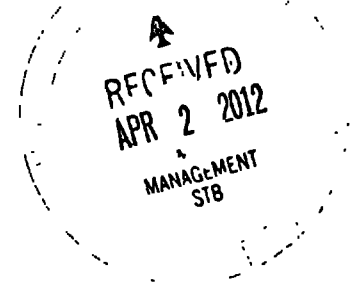
LOUIS E. GITOMER
Lou@lgraillaw.com

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TOWSON, MARYLAND 21204-4022
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April 2, 2012

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423



RE: Finance Docket No. 32607 (Sub-No. ⁴), *Kiamichi Railroad L.L.C.-Trackage Rights Exemption—WFEC Railroad Company*

Dear Ms. Brown:

Enclosed for filing are the original and ten copies of a Verified Notice of Exemption under 49 C.F.R. § 1180.2(d)(7), a diskette with the Notice in WORD and pdf format, and a check for the \$1,100.00 filing fee.

Please time and date stamp the extra copy of this letter and the Verified Notice of Exemption and return them with our messenger.

If you have any questions, please contact me.

FEE RECEIVED
APR 2 - 2012
**SURFACE
TRANSPORTATION BOARD**

Sincerely yours,

Louis E. Gitomer
Attorney for Kiamichi Railroad L.L.C.

ENTERED
Office of Proceedings

APR 2 - 2012

Part of
Public Record

Enclosures

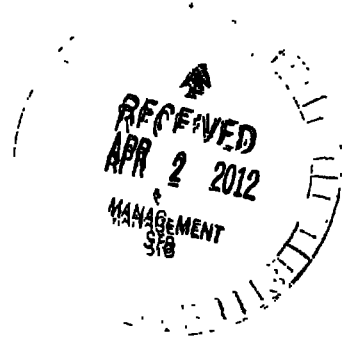
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APR 2 2012
**SURFACE
TRANSPORTATION BOARD**

232144

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32607 (Sub-No.4)

**KIAMICHI RAILROAD L.L.C.
- TRACKAGE RIGHTS EXEMPTION -
WFEC RAILROAD COMPANY**



VERIFIED NOTICE OF EXEMPTION

**ENTERED
Office of Proceedings**

APR 2 - 2012

**Part of
Public Record**

**FEE RECEIVED
APR 2 - 2012
SURFACE
TRANSPORTATION BOARD**

**FILED
APR 2 2012
SURFACE
TRANSPORTATION BOARD**

Scott G. Williams, Esq.
Senior Vice President and General Counsel
RailAmerica, Inc.
7411 Fullerton Street
Suite 300
Jacksonville, FL 32256
(904) 538-6329

Louis E. Gitomer, Esq.
Melanie B. Yasbin, Esq.
600 Baltimore Avenue
Suite 301
Towson, MD 21204
(410) 296-2250

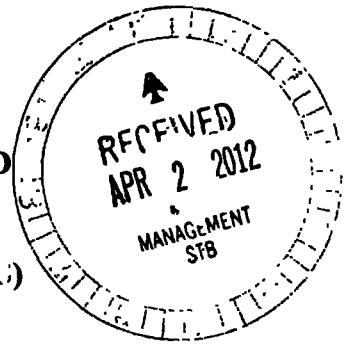
Attorneys for:
Kiamichi Railroad, LLC

Dated: April 2, 2012

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32607 (Sub-No. .)

**KIAMICHI RAILROAD L.L.C.
– TRACKAGE RIGHTS EXEMPTION –
WFEC RAILROAD COMPANY**



VERIFIED NOTICE OF EXEMPTION

Kiamichi Railroad L.L.C. (“KRR”) submits this Verified Notice of Exemption (this “Notice”), pursuant to 49 C.F.R. § 1180.2(d)(7) and 49 C.F.R. § 1180.4(g), for exemption of an extension of overhead trackage rights over the entire line of WFEC Railroad Company (“WFECR”), between milepost 0.0, at Western Farmers Electric Cooperative, Inc.’s (“Western Farmers”) Hugo electric generating station and milepost 14.98, where WFECR connects to the line of the Texas, Oklahoma & Eastern Railroad Company, in Choctaw and McCurtain Counties, OK, a distance of approximately 14 miles (the “Line”).

Under 49 C.F.R. § 1180.2(d)(7), the acquisition of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on written agreements and (ii) not filed or sought in responsive applications in rail consolidation proceedings. The trackage rights covered by this Notice (i) are covered by the Joint Facility Agreement entered as of January 1, 2012 (the “Agreement”) and (ii) are not being filed or sought in responsive applications in a rail consolidation proceeding. As such, the section 1180.2(d)(7) exemption applies.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), KRR submits the following information:

§ 1180.6(a)(1)(i) Description of Proposed Transaction

The transaction covered by this Notice is the acquisition of limited non-exclusive overhead trackage rights by KRR over the entire line of WFECR, between milepost 0.0, at Western Farmers' Hugo electric generating station and milepost 14.98, where WFECR connects to the line of the Texas, Oklahoma & Eastern Railroad Company, in Choctaw and McCurtain Counties, OK, a distance of approximately 14 miles.

The name and business address of the applicant is:

Kiamichi Railroad L.L.C.
800 Martin Luther King Drive
Hugo, OK 74743

Questions regarding this transaction are to be addressed to the representatives named below:

Louis E. Gitomer
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgrailaw.com

§ 1180.6(a)(1)(ii) Consummation Date

The Trackage Rights will become effective on May 2, 2012.

§1180.6(a)(1)(iii) Purpose of the Transaction

The purpose of this transaction is to permit KRR to provide rail transportation between the Hugo generating station and other Western Farmers facilities located on or adjacent to the Line, or that may locate on or adjacent to the Line in the future.

§ 1180.6(a)(5) States in which the Applicant Operates

KRR operates in Arkansas, Oklahoma, and Texas.

§ 1180.6(a)(6) Map (Exhibit 1)

A map is attached as Exhibit 1.

§ 1180.6(a)(7)(ii) Agreement (Exhibit 2)

An executed copy of the joint Facility Agreement is attached as Exhibit 2.

§ 1180.4(g)(1)(I) Labor Protection

Because this transaction involves Class III rail carriers only, the Board, under 49 U.S.C. §11326(c), may not impose labor protective conditions on this transaction.

§ 1180.4(a)(2)(i) Caption Summary (Exhibit 3)

A caption summary is attached as Exhibit 3.

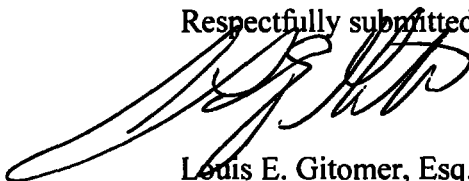
§ 1180.4(g)(3) Environmental Documentation

Environmental documentation is not required for this transaction. See 49 C.F.R. § 1105.6(c)(4) (no environmental documentation required for common use of rail terminals and trackage rights).

§ 1180.4(g)(4) Interchange Commitments

There are no interchange commitments or paper barriers in the Agreement.

Respectfully submitted,



Scott G. Williams, Esq.
Senior Vice President and General Counsel
RailAmerica, Inc.
7411 Fullerton Street, Suite 300
Jacksonville, FL 32256
(904)538-6329

Louis E. Gitomer, Esq.
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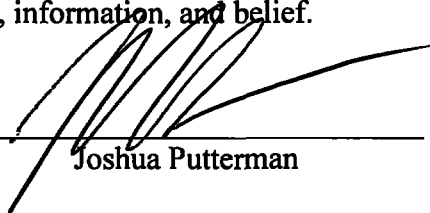
Attorneys for:
Kiamichi Railroad L.L.C.

Dated: April 2, 2012

VERIFICATION

STATE OF FLORIDA)
)
COUNTY OF DUVAL) ss.

I, Joshua Putterman, being duly sworn depose and state that I am Vice-President of Kiamichi Railroad L.L.C. that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.



Joshua Putterman

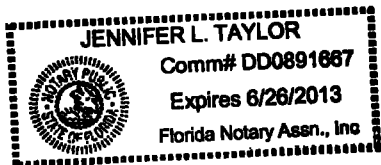
SUBSCRIBED AND SWORN TO before me this 29th day of March 2012.

My Commission Expires: 6/26/2013



Notary Public

JENNIFER L. TAYLOR



CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing document upon the following by first class United States mail.

Oklahoma Department of Transportation
200 N.E. 21st Street
Oklahoma City, OK 73105

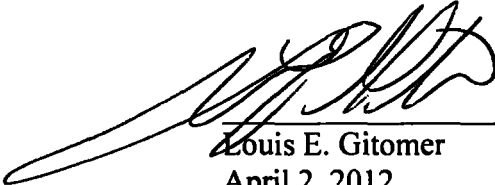
Governor Fallin
Oklahoma State Capitol
2300 N. Lincoln Blvd., Room 212
Oklahoma City, OK 73105

Oklahoma Corporation Commission
Railroad Section
P.O. Box 52000
Oklahoma City, OK 73152-2000

Secretary of Transportation
Office of Chief Counsel
Federal Railroad Administration
Docket Clerk
1120 Vermont Avenue NW
Washington, D.C. 20005

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Federal Trade Commission
Premerger Notification Office
600 Pennsylvania Avenue NW
Room 303
Washington, D.C. 20580



Louis E. Gitomer
April 2, 2012

EXHIBIT 1-MAP

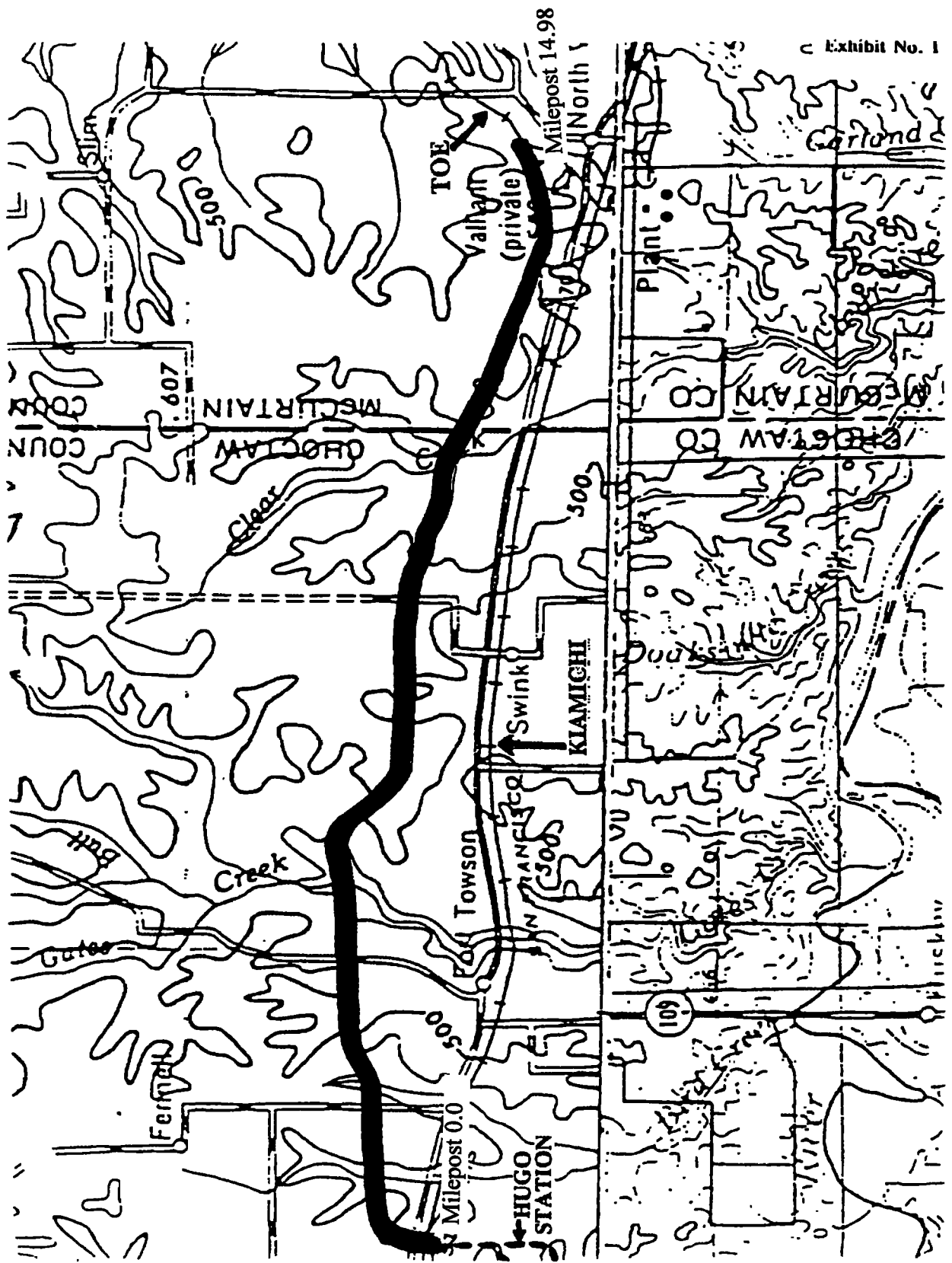


EXHIBIT 2-AGREEMENT

JOINT FACILITY AGREEMENT

By and Between

WFEC RAILROAD COMPANY

and

KIAMICHI RAILROAD L.L.C.

JOINT FACILITY AGREEMENT

THIS AGREEMENT is made and effective as of January 1, 2012 ("Effective Date"), by and between WFEC Railroad Company, an Oklahoma corporation (hereinafter referred to as "WFEC R.R.") and KIAMICHI RAILROAD L.L.C. ("KRR"), a Delaware limited liability corporation, with its principal place of business at 800 Martin Luther King Drive, Hugo, Oklahoma 74743.

WITNESSETH:

WHEREAS, WFEC R.R. has built a certain line of railroad in the vicinity of Western Farmers Electric Cooperative's Hugo Station near Fort Towson, Oklahoma, and

WHEREAS, KRR wishes to acquire certain rights in this railway line and WFEC R.R. is willing to grant such rights.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Description of Line of Railroad.

A. The property and facilities covered by this Agreement are herein referred to as the "Joint Facility," and are fully described in the narrative and the diagram appearing as Exhibit A, attached hereto. The use of the Joint Facility hereby granted to KRR shall include use of all appurtenances thereto of the Joint Facility, including, but not necessarily limited to, rail and fastenings, switches and frogs complete, ties, ballast, roadbed, embankments, signals, bridges, trestles, culverts, drainage facilities and any other structures or things necessary for the

support of the Joint Facility and entering into the construction thereof, and, if any portion thereof is located in a thoroughfare, pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing material at vehicular crossings of tracks, crossing protection facilities, and any and all work required by lawful authority in connection with the construction, renewals, maintenance and operation of said track structures and all appurtenances thereof.

B. The Joint Facility shall be understood to include facilities to form interconnections including, but not limited to, all necessary and required land, signals, switches, track, etc. for the provision of adequate and efficient unit coal train service between the Joint Facility and the lines of KRR and other carriers.

2. Grant.

A. WFEC R.R. hereby grants to KRR from the Effective Date, and subject to the provisions of this Agreement, the right to use the Joint Facility (hereinafter referred to as "Run-Through Rights") for the purposes of rail transportation between or among the Hugo Generating Station and other Western Farmers facilities now or hereafter located on or adjacent to the Joint Facility.

B. The Run-Through rights herein granted by WFEC R.R. to KRR are bridge rights only and KRR is not permitted to accept from or deliver freight to any industry other than Western Farmers' facilities located or hereafter located on or adjacent to the Joint Facility.

3. Payments.

All costs of maintaining the Joint Facility will be borne by WFEC R.R. under its separate arrangements with Western Farmers. KRR shall not bear any such maintenance costs, except to the extent required under Section 10.

4. Management and Control.

A. WFEC R.R. shall have exclusive control with respect to management, maintenance and operation of the Joint Facility. Nothing in this Agreement shall limit the right of WFEC R.R. to use the Joint Facility or the right of WFEC R.R. to admit other companies to the use of the trackage or any part thereof on such terms and conditions satisfactory to WFEC R.R. However, such admission shall not materially impair the use herein contemplated by KRR.

B. KRR may engage in transportation over the Joint Facility subject to this Agreement and to such rules, regulations, and orders of WFEC R.R. as are applicable to the Joint Facility. All such rules, regulations, and orders shall be reasonable and fair. KRR shall arrange to obtain legal authority, if any, required to provide transportation service on the Joint Facility.

5. Devices on Equipment.

KRR, at its expense, shall install and maintain upon its engines and cars such equipment or devices as now, or in the future, may be necessary or appropriate, in the reasonable judgment of WFEC R.R., for operation of trains upon the Joint Facility.

6. Additions and Betterments.

WFEC R.R. shall make any changes, additions and/or betterments to the Joint Facility, at the sole cost and expense of the party desiring or requesting same.

7. Picking Up Wrecks.

If any engine, car or other equipment shall be wrecked or derailed upon the Joint Facility, the same shall, without unnecessary delay, be picked up or rerailed by the party whose engine, car or other equipment is wrecked or derailed.

8. Train Supplies.

WFEC R.R. shall not be required to furnish any fuel or other supplies for the operation of KRR's locomotives or trains over the Joint Facility. In the event WFEC R.R. should, nevertheless, furnish such supplies to KRR, KRR shall promptly, upon receipt of billing therefor, reimburse WFEC R.R. for its cost thereof, plus customary additives.

9. Observance of Laws, Public Rules and Regulations.

Each party, with respect to the use of the Joint Facility and the operation of equipment thereon and thereover, shall comply with all applicable laws, rules, regulations and orders promulgated by any governmental entity having jurisdiction in the matter for the protection of persons or otherwise, and if any failure on the part of either party so to comply therewith shall result in any fine, penalty, cost or charge being imposed or assessed on or against the other party,

the party so failing shall promptly reimburse and indemnify such other party for or on account of such fine, penalty, cost or charge and for all expenses and attorneys' fees incurred in defending any action which may be brought against such other party on account thereof, and shall, upon notice thereof being given to it by the other party, defend any such action free of cost, charge and expense to the other party.

10. Liability.

A. WFEC R.R. and KRR each shall assume all liability for injury to or death of any person, and for loss of, damage to, or destruction of any property, arising out of the operation of motive power, cars, or equipment over the Joint Facility by their respective employees; provided, however, that if any such injury, death, loss, damage, or destruction arises out of an occurrence in which motive power, cars, or equipment operated by employees of both WFEC R.R. and KRR are involved, WFEC R.R. and KRR shall each be liable for injuries to or death of their own employees, and for loss of, damage to, or destruction of property belonging to or in the custody, possession, or control of each of their own employees (other than the Joint Facility itself), and WFEC R.R. and KRR each shall bear only one-half of the liability for injuries to or death of third parties, and for loss of, damage to, or destruction of the property of third parties or of the Joint Facility.

B. Except as otherwise provided in Section 10.A., above, liability for injuries to or death of any persons and for loss of, damage to, or destruction of any property, arising out of WFEC R.R.'s and KRR's activities on or related to the Joint Facility, shall be determined

under applicable law. Section 10.A. allocates certain risks of liability between WFEC R.R. and KRR, and shall not be construed as conferring any rights on any other parties.

C. Each party hereto shall pay promptly damages for which such party shall be liable under the provisions of this Section 10, and shall indemnify the other party against such damages including attorneys' fees and costs.

D. Each party hereto shall have the right to settle, or cause to be settled for it, all claims for damages for which party shall be liable under the provisions of this Section 10 and to defend or cause to be defended all suits for the recovery of any such damage.

E. In the event the parties hereto may be liable under the provisions of this Section 10 for any damages and the same is settled by a voluntary payment of money or other valuable consideration by one of the parties jointly liable therefor, a release from liability shall be obtained in the names of the parties so liable; however, no such settlement in excess of Twenty Thousand Dollars (\$20,000) shall be made by or for either party without the authority of the other party, but any settlement made by either party in consideration of said sum or less sum shall be binding upon the other party.

F. In case a suit shall be commenced against either party for or on account of damages for which the other party is solely or jointly liable under the provisions of this Section 10, the party so sued shall give notice in writing to the other party of the pendency of said suit, and thereupon the other party shall assume or join in the defense of such suit.

G. No other party shall be bound by any judgment against the other party, unless such party shall have had reasonable notice requiring it to defend any reasonable

opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified shall be bound by the judgment as to all matters which could have been or were litigated in such suits.

11. Maintenance.

WFEC R.R. shall at all times during the term of this Agreement maintain the Joint Facility in a state of reasonable repair and reasonably suitable for the requirements of the parties and in particular for unit coal train service in trains of at least one hundred and thirty-five (135) cars.

12. Assignment and Succession.

All of the obligations and covenants herein imposed, as well as all of the benefits herein conferred, shall be binding upon and inure to the benefit of the parties hereto and to their respective successors and assigns. Any sale or other disposition of the Joint Facility by WFEC R.R. during the term of this Agreement shall be on condition that this Agreement shall be assumed, honored and otherwise continued in full force and effect by any prospective purchaser from or successor in interest to WFEC R.R.

13. Nonwaiver of Rights.

The failure of either party hereto, in any one or more than one instance, to insist upon the performance of any of the terms of this Agreement, or to exercise any rights hereunder,

or the waiver by any party hereto of any breach of the terms of this Agreement will not be construed thereafter as waiving any such terms or rights, but the same will continue and remain in full force and effect as if no such forbearance or waiver had occurred.

14. Choice of Law.

This Agreement shall be deemed a contract made in the State of Oklahoma and will be governed by and construed according to the laws of that state, except that matters related to common carrier obligations and loss and damage to lading shall be construed and interpreted consistent with relevant statutes and court decisions establishing the obligations of carriers providing interstate common carriage by rail.

15. Entire Agreement.

This Agreement and the Exhibit A hereto comprise the entire agreement between the parties, and supersede all prior understandings, representations and contracts between the parties concerning the subject matter or in consideration thereof.

16. Notices.

All notices required hereunder will be in writing unless otherwise provided and will be deemed properly given when delivered in person to the authorized representative of the party designated below or when sent by mail, telegram, telecopy or telex addressed as follows:

To WFEC R.R.:

P.O. Box 310
Fort Towson, OK 74735

To KRR: General Manager
 800 Martin Luther King Drive
 Hugo, Oklahoma 74743

Each party may change the address and authorized representative by following this notice provision.

17. Arbitration.

In case any question arises under this Agreement or concerning the subject matter hereof, upon which the parties cannot agree, such question shall be settled by a disinterested arbitrator selected by mutual consent of the parties. If the parties cannot agree on an arbitrator, then each party shall select an arbitrator, and the two selected shall jointly select a third. The decision and award of the arbitrator or arbitrators in the matter shall be final and conclusive on the parties and judgment may be entered thereon in any court of competent jurisdiction. The expense of arbitration shall be borne jointly by the parties.

18. Performance of Other Party's Obligations.

If either party hereto (the "Obligated Party") shall fail to comply with any of its covenants or obligations under this Agreement, the other party hereto (the "Performing Party"), after notice to the Obligated Party, may, but shall not be required to, make advances to perform said obligation, perform said obligation itself, or take all such actions as may be necessary to obtain such performance; provided, however, that any payment so made or any action so taken

it prevent exercise against the Obligated Party of any remedies for such default available to the Performing Party. Any such payment so made by the Performing Party, and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Obligated Party to the Performing Party upon demand.

19 Term.

This Agreement shall become effective on January 1, 2012, subsequent to having secured all necessary consent, approval or authority from the appropriate governmental agency or agencies upon and conditions satisfactory to WFEC R.R., and shall remain in effect for an initial period of five (5) years and thereafter until terminated by providing one (1) year's written notice by either party hereto to the other.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

WFEC RAILROAD COMPANY

Witness: 

By: 

Its: CEO

du 12/13/11
du 12-20-11

KIAMICHI RAILROAD L.L.C.

Witness: 

By: 

Its: Vice President + Treasurer

Exhibit A

WFEC RAILROAD COMPANY

PO BOX 310

FT. TOWSON, OK. 74735



SECTION 40



EXHIBIT 3-CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
FINANCE DOCKET NO. 32607 (Sub-No. 3)**

**KIAMICHI RAILROAD L.L.C.
– TRACKAGE RIGHTS EXEMPTION –
WFEC RAILROAD COMPANY**

WFEC Railroad Company (“WFECR”) has agreed to grant an extension of overhead trackage rights (the “Trackage Rights”) to Kiamichi Railroad L.L.C. (“KRR”) for WFECR’s entire line, between milepost 0.0, at Western Farmers Electric Cooperative, Inc.’s Hugo electric generating station and milepost 14.98, where WFECR connects to the line of the Texas, Oklahoma & Eastern Railroad Company, in Choctaw and McCurtain Counties, OK, a distance of approximately 14 miles.

No labor protection is being imposed because two Class III railroads are involved in the transaction. 49 U.S.C. 11326(c).

The Trackage Rights will be effective on or after May 2, 2012.

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32607 (Sub-No. 3) must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served

on Louis E. Gitomer, Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite
301, Towson, MD 21204, Lou@lgrailaw.com.

Dated:

By the Board, Rachel D. Campbell, Director, Office of Proceedings.